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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,969

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William L. Harrison

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EXAMINER

TRUONG, THANH K

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

07/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,969	<b>Applicant(s)</b> HARRISON ET AL.	
	<b>Examiner</b> THANH K. TRUONG	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 11, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 12-18 and 21-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3-26-04 &amp; 10-21-04</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II, claims 8-10, 12-18 and 21-27 in the reply filed on May 29, 2008 is acknowledged. The traversal is on the ground(s) that:

*“While the inventions defined by the claims may be independent or distinct, there is no demonstration that the search and examination of all the pending claims would entail a serious burden to the Examiner. In particular, it is submitted that any additional burden on the examiner in considering Inventions I and II together is not so serious as to require restriction, and therefore, Applicants respectfully request withdrawal of the restriction requirement.”*

This is not found persuasive because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-7, 11, 19 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.
3. Claim 11, as recited – “the system of claim 1”, is a dependent of claim 1 and therefore, it is being withdrawn to a nonelected invention (Group I).

### ***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “tucking flaps include **notches** shaped to provide clearance for said separators” (emphasis added), as

recited in claim 18, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The disclosure is objected to because of the following informalities: same reference number for different parts – “lugs 62” (page 6,[0025], line 1) and “storage area 62” (page 6, [0026], line 1).

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 8-10, 13, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Godet (3,498,022).

Godet discloses an system comprising:

a staging device (1) for sequentially collecting food items (21) into a plurality of groups substantially downwardly;

an accumulating and storage device (5) for receiving the groups substantially simultaneously from the staging device, and sequentially forming successive layers simultaneously; and

a packing device (4) for receiving the predetermined number of layers of groups from the accumulating and storage device in a packing area.

Godet further discloses:

Regarding claims 9 and 10, the plurality of groups fall by gravity into the accumulating and storage device and the packing area.

Regarding claims 13 and 14, the accumulating and storage device includes a pair of laterally reciprocating rods (14, 15), and a plurality of dividers (8, 9).

Regarding claim 16, it is construed that Godet system comprising a controller in order to synchronize the timing of all movements in the system.

8. Claims 8-10, 12-16, 21 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Godet (3,445,986).

Godet discloses an system comprising:

a staging device including a lug chain drive (1) for sequentially collecting food items (18) into a plurality of groups substantially downwardly;

an accumulating and storage device (4) for receiving the groups substantially simultaneously from the staging device, and sequentially forming successive layers simultaneously; the accumulating and storage device including a plurality of dividers (5) (as in the independent claims 23-25) positioned to direct the groups and maintain the groups intact and aligned as the group fall from the staging device; and

a packing device (6) for receiving in receptacles the predetermined number of layers of groups from the accumulating and storage device in a packing area (column 3, lines 1-3).

Godet further discloses:

Regarding claims 9 and 10, the plurality of groups fall by gravity into the accumulating and storage device and the packing area.

Regarding claim 12, the staging device includes a pair of laterally reciprocating rods (3) – column 2, lines 51-57.

Regarding claims 13 and 14, the accumulating and storage device includes a pair of laterally reciprocating rods (not number – figure 1 show the rods are connected to device (33)), and a plurality of dividers (5).

Regarding claim 15, the packing device includes a receptacle having a plurality of separators dividing the receptacle into cavities shaped to receive the predetermined number of received layers of groups from the accumulating and storage device (column 3, lines 1-3).

Regarding claim 16, it is construed that Godet system comprising a controller in order to synchronize the timing of all movements in the system.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 17, 18, 22 and 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godet (3,445,986) (hereinafter Godet '986) in view of Godet (3,498,022) (hereinafter Godet '022).

As discussed above, Godet '986 discloses the claimed invention, but it does not expressly disclose a pair of rotatable tucking flaps positioned between the accumulating and storage area and the packing area as recited in claim 26.

Godet '022 discloses a pair of rotatable tucking flaps (10, 11) positioned between the accumulating and storage area (1) and the packing area (4), the tucking flaps (10, 11) provide an effective means to deposit food product into the containers below.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the system of Godet '986 by incorporating the pair of rotatable tucking flaps (10, 11) as taught by Godet '022 to provide an effective means to deposit food product into the containers below.

The modified Godet '986 by Godet '022 further discloses:

Regarding claims 17, 18 and 22, the pair of rotatable tucking flaps (10, 11) include notches shaped to provide clearance for the separators, thereby allowing the flaps to rotate below horizontal into the cavities.

Regarding claim 27, the packing device includes a receptacle having a plurality of separators dividing the receptacle into cavities shaped to receive the predetermined number of layers of the groups from the accumulating and storage device (column 3, lines 1-3).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to THANH K. TRUONG whose telephone number is (571)272-4472. The examiner can normally be reached on Mon-Fri 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tkk  
July 13, 2008.

/Thanh K Truong/  
Primary Examiner, Art Unit 3721.